

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOE ANN WEST,

Plaintiff,

v.

SEAN J STACKLEY, Secretary of the
Department of the Navy,

Defendant.

CASE NO. C17-5366RBL

ORDER

THIS MATTER is before the Court on Defendant Stackley's Motion to Dismiss [Dkt. #19], and on Plaintiff West's Motions for a Conference [Dkt. #22], and to Recuse U.S. Attorney Annette Hayes [Dkt. #23]. This is one of nine¹ cases West has filed this year related to her employment at the Puget Sound Naval Shipyard in Bremerton, which ended in August 2016.

¹ The cases are:

West v. Stackley, C17-5246RBL,
West v. Stackley, C17-5273RBL,
West v. Stackley, C17-5366RBL,
West v. Stackley, C17-5367RBL,
West v. Stackley, C17-5368RBL,
West v. Sessions, C17-5426RBL,
West v. Stackley, C17-5510RBL.

Two prior cases (purported class actions) against the prior Secretary of the Navy, *West v Mabus*, C16-5191RBL and *West v Mabus*, C16-5204RBL, were dismissed.

1 Each generally complains about race, color and disability discrimination, and retaliation
2 for complaining about discrimination. The complaint in this case is particularly difficult to
3 understand. It appears to be based both on allegations about what others in the Navy did to her,
4 and on allegations that the Navy's nuclear fleet is out of compliance with various regulations.
5 West claims that "Code 740 Loft Rigger Mechanic Robert M. Herman's" nuclear qualification
6 expired, with severe consequences:

7 **Any/all and every AOE equipment of the carriers,**
8 **submarines any/all vessels or ships Code 740 Loft Rigger**
9 **Mechanic Robert M. Herman has signed, performed**
10 **maintenances, inspections, repairs, testing (s),**
11 **certifications or re-certifications are uncertified from**
12 **the date his nuclear qualification (s) expired to present**
13 **date of this equal employment opportunity informal**
14 **complaint. Per Department of Defense-Department of the**
15 **Navy-Puget Sound Naval Shipyard & IMF-4523A the Nuclear**
16 **Program (s) are immediately in the "REDZONE". Infinite**
17 **accidents have occurred and a full complete verbatim**
18 **investigation must be implemented. Any/all and every Code**
19 **2300 Documents, TGI'S, Technical Work Documents and**
20 **Special Purpose (SPS) equipment Documents/TGI'S/Technical**
21 **Work Documents are to be put in a steadfast status and**
22 **are not to be altered or are not to be changed/are not to**
23 **be destroyed or are not to be concealed.**

18 [Dkt. # 1 at 9] The relationship between the conclusory allegations personal to her and the
19 broader allegations about naval readiness is not clear.

20 Stackley moves for dismissal for lack of subject matter jurisdiction on most of West's
21 claims, and for failure to state a plausible claim as to all of them. He argues persuasively that
22 West's constitutional claims against the United States (and the Navy, and its Secretary, sued in
23 his official capacity) are barred by sovereign immunity, and it is well-established that the United
24

1 States has not waived this immunity. *See FDIC v. Meyer*, 510 U.S. 471, 477 (1994) (the United
2 States has not waived its sovereign immunity for constitutional claims). And West’s claims
3 against the Secretary fail because she has not alleged that he personally participated in any
4 alleged violation. Indeed, West makes only one allegation about Stackley:

5 SEAN J. STACKLEY is the Acting Secretary of the United States
6 Navy. As an employer of the Federal Government, the defendant
7 is empowered to prescribe regulations for the operation of the
8 Department of the Navy and the conduct of its employees, and is
9 subject to the anti-discrimination provisions of Title VII of
10 the Civil Rights Act of 1964, as amended.

11 [Dkt. #1 at paragraph 3.2] This seems to be an argument that the Navy or its Secretary is
12 vicariously liable for the constitutional and other violations West claims.

13 Stackley also points out that West’s ADA claim cannot be asserted against her federal
14 employer. *Maish v. Napolitano*, Case No. 12-581-RAJ, 2013 U.S. Dist. LEXIS 153174 (W.D.
15 Wash. Oct. 24, 2013) (*citing* 42 U.S.C. § 12111(5)(B)(i) (the federal government is not an
16 “employer” for purposes of the ADA)).

17 Stackley argues that West’s other allegations fail to articulate any facts that would
18 support her repeated, conclusory allegations that various individuals “discriminated” or
19 “retaliated” against her, or how, or why.

20 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal
21 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*
22 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff’s complaint must allege
23 facts to state a claim for relief that is plausible on its face. *See Aschcroft v. Iqbal*, 129 S. Ct.
24 1937, 1949 (2009). A claim has “facial plausibility” when the party seeking relief “pleads factual
content that allows the court to draw the reasonable inference that the defendant is liable for the
misconduct alleged.” *Id.* Although the Court must accept as true the Complaint’s well-pled facts,

1 conclusory allegations of law and unwarranted inferences will not defeat a Rule 12(c) motion.
2 *Vazquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State*
3 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation to provide the ‘grounds’
4 of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic
5 recitation of the elements of a cause of action will not do. Factual allegations must be enough to
6 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
7 (2007) (citations and footnotes omitted). This requires a plaintiff to plead “more than an
8 unadorned, the-defendant-unlawfully-harmed-me-allegation.” *Iqbal*, 129 S. Ct. at 1449 (citing
9 *Twombly*). A *pro se* Plaintiff’s complaint is to be construed liberally, but like any other
10 complaint it must nevertheless contain factual assertions sufficient to support a facially plausible
11 claim for relief. *Id.*

12 On a 12(b)(6) motion, “a district court should grant leave to amend even if no request to
13 amend the pleading was made, unless it determines that the pleading could not possibly be cured
14 by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,
15 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether
16 there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v.*
17 *Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).

18 West’s response to the motion articulates three slightly different claims: she appears to
19 claim retaliation for filing three EEO complaints, related to sexual harassment, asbestos
20 exposure, and the use of uncertified gear to work on ships. The bulk of her response is dedicated
21 to the latter issue, but the relationship between those alleged violations and her discrimination or
22 retaliation claims remains unclear.

1 West also complains (again) that the attorney representing the moving party submitted a
2 “prefabricated” **PROPOSED** order granting the relief she sought (dismissal), and in doing so
3 ordered Judge Bryan (?) to “follow her written directions to dismiss.” This argument is
4 misguided and specious.

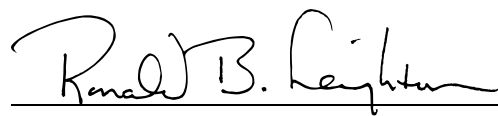
5 The Response does not address or remedy Stackley’s arguments, or the fatal flaws in
6 West’s complaint. She does not tie any of the “violations” she claims to any one person, much
7 less to the defendant she sued, Stackley.

8 West’s claims are purely conclusory and they are not plausible, no matter how liberally
9 they are construed. West has already filed nine lawsuits and at least 100 motions, requests or
10 responses in this court this year, and not one of them articulates a plausible claim. There is
11 nothing that she could add or alter in yet another bite at the apple that would cure these fatal
12 defects. The Motion to Dismiss is GRANTED, and West’s claims in this matter are DISMISSED
13 with prejudice and without leave to amend.

14 West’s own motions (filed in multiple cases) [Dkt. #s 22 and 23] are DENIED as moot.

15 IT IS SO ORDERED.

16 Dated this 19th day of September, 2017.

17
18 

19 Ronald B. Leighton
20 United States District Judge
21
22
23
24